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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,416	09/27/2001	Richard Mertens	KST-02	3812

26875 7590 10/22/2003

WOOD, HERRON & EVANS, LLP
2700 CAREW TOWER
441 VINE STREET
CINCINNATI, OH 45202

EXAMINER

BARBEE, MANUEL L

ART UNIT	PAPER NUMBER
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2857

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/965,416

Applicant(s)

MERTENS ET AL.

Examiner

Manuel L. Barbee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nantel et al. (US Patent Application Publication 2001/0052986) in view of De Caris et al. (US Patent No. 5,750,938).

With regard to checking the contents of pockets in blister packets, as shown in claim 1, Nantel et al. teach measuring the mass or volume of pockets in a blister package (par. 4 and 5). With regard to using an evaluation unit to compare the detected volume to a target volume, Nantel et al. teach comparing determined mass to an acceptable mass range (par. 11). Nantel et al. do not teach detecting a filled volume using a capacitive test probe and, as shown in claim 1. Nantel et al. do not teach detecting each pocket, as shown in claim 3.

De Caris et al. teach using a capacitive sensor to weigh drug filled capsules and comparing the filled weight to an acceptable range to determine whether the capsule was filled properly (col. 2, line 34 - col. 3, line 12; col. 4, line 39-52; col. 5, line 66 - col. 6, line 20). Weight is calculated using mass. Mass is directly proportional to volume given a constant pressure and temperature. Therefore if the mass of the material is known, the volume is known. De Caris et al. teach measuring each capsule (col. 2, line

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64 - col. 3, line 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the mass sensing device, as taught by Nantel et al., to include measuring volume using a capacitive sensor, as taught by De Caris et al., because then all of drug units would have been measured (De Caris et al., col. 1, lines 36-59). It would further have been obvious to one of ordinary skill in the art at the time the invention was made to modify the mass sensing device, as taught by Nantel et al. to include measuring each drug unit, as taught by De Caris et al., because then no drug unit would go undetected (De Caris et al., col. 1, lines 29-35).

3. Claims 2, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nantel et al. in view of De Caris et al. as applied to claims 1 and 3 above, and further in view of Dam (US Patent No. 5,880,364).

Nantel et al. and De Caris teach all the limitations of claim 1 upon which claim 2 depends and claim 3 upon which claims 4 and 5 depend. Nantel et al. and De Caris et al. do not teach displaying the value of the comparison, as shown in claim 2, or a number of sensors corresponding to the number of pockets in a row of the package or the number of pockets in the package. Dam teach displaying the volume measurement on the containers and displaying a map of the fill data (col. 4, lines 46-50; col. 5, lines 9-11). Dam teach having a number of sensors equal to the number of containers in a tray which could also correspond to the entire number of containers in a tray depending on the configuration of the containers (Fig. 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the mass sensing combination, as taught by Nantel et al. and De Caris et al., to include displaying the

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measured quantity, as taught by Dam, because then the data would have been easily accessible for analysis. It would further have been obvious to one of ordinary skill in the art at the time the invention was made to modify the mass sensing combination, as taught by Nantel et al. and De Caris et al., to include using a number of sensors corresponding to the number of drug units in a row or in an entire package, as taught by Dam, because then measurement would have been completed more quickly.

Response to Arguments

4. Applicant's arguments filed 4 September 2003 have been fully considered but they are not persuasive.

Applicants state that Nantel et al. is completely silent with respect to measuring a volume of a substance within a blister package. Nantel et al. teach measuring the mass of a substance in a blister package (par. 4). Mass is directly proportional to volume given a constant pressure and temperature. Further, Nantel teach metering some substances, which could be packaged in blister packages, using volume (par. 5).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel L. Barbee whose telephone number is 703-308-0979. The examiner can normally be reached on Monday-Friday from 8-4:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on 703-308-1677. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-0976.

mlb


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800